

HOUSE BILL No. 1439

DIGEST OF INTRODUCED BILL

Citations Affected: IC 33-24-2-5; IC 33-25-2-5; IC 33-27-2; IC 33-27-3-7.

Synopsis: Judicial nominating commission. Allows the judicial nominating commission (commission) to make a recommendation concerning the approval or rejection of a justice of the supreme court, a judge of the court of appeals, or the judge of the tax court who is standing for retention in a general election. Requires any recommendation made by the commission to be placed on the general election ballot following the justice's or judge's retention question. Provides that nominees for the elected attorney member positions on the commission are selected by the speaker of the house of representatives and the president pro tempore of the senate instead of the attorney electors in each court of appeals district. Provides that the term of office of each: (1) elected attorney member; and (2) appointed nonattorney member; of the commission expires on September 1, 2007. Requires the clerk of the supreme court to begin proceedings to conduct a special election to replace the elected attorney members of the commission not later than June 1, 2007. Requires the governor to appoint new nonattorney members of the commission to replace the appointed nonattorney members of the commission not later than August 1, 2007.

Effective: Upon passage.

Foley, Noe

January 16, 2007, read first time and referred to Committee on Judiciary.

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Introduced

First Regular Session 115th General Assembly (2007)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2006 Regular Session of the General Assembly.

HOUSE BILL No. 1439

A BILL FOR AN ACT to amend the Indiana Code concerning courts and court officers.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 33-24-2-5, AS AMENDED BY P.L.58-2005,
2 SECTION 29, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 UPON PASSAGE]: Sec. 5. (a) The question of approval or rejection of
4 a justice shall be placed on the general election ballot in the form
5 prescribed by IC 3-11 and must state "Shall Justice (insert name (as
6 permitted under IC 3-5-7) here) be retained in office?".

7 (b) If the judicial nominating commission makes a
8 recommendation under IC 33-27-3-7 concerning the approval or
9 rejection of:

10 (1) a justice; or

11 (2) the judge of the tax court as provided in IC 33-26-2-3(b);
12 the recommendation shall be placed on the general election ballot
13 immediately following the question described in subsection (a) and
14 must state "The Indiana judicial nominating commission has
15 recommended that the retention of (Justice or Judge) (insert name
16 (as permitted under IC 3-5-7) here) be approved (be rejected)".

17 SECTION 2. IC 33-25-2-5, AS AMENDED BY P.L.58-2005,



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SECTION 30, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 5. (a) The question of approval or rejection of a judge shall be placed on the general election ballot in the form prescribed by IC 3-11 and must state "Shall Judge (insert name (as permitted under IC 3-5-7) here) be retained in office?".

(b) **If the judicial nominating commission makes a recommendation under IC 33-27-3-7 concerning the approval or rejection of a judge, the recommendation shall be placed on the general election ballot immediately following the question described in subsection (a) and must state "The Indiana judicial nominating commission has recommended that the retention of Judge (insert name (as permitted under IC 3-5-7) here) be approved (be rejected)."**

SECTION 3. IC 33-27-2-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 2. (a) For purposes of electing attorney members to the judicial nominating commission, the state shall be divided into three (3) districts, corresponding to the First District, the Second District, and the Third District of the court of appeals.

(b) The qualified electors consist of the individuals who are registered with the clerk of the supreme court as attorneys in good standing under the requirements of the supreme court.

(c) The electors of each district shall elect one (1) resident of their district who is admitted to the practice of law in Indiana **and who has been nominated under section 3 of this chapter** to the judicial nominating commission. The term of office of each elected member is three (3) years, beginning on the first day of January following the election. During the month before the expiration of an elected member's term of office, an election shall be held to fill the succeeding three (3) year term of office. Attorney commissioners on the commission must reside for the term of their office in the district from which they were elected. An attorney commissioner is considered to have resigned the position if the residency of the attorney commissioner changes from the court of appeals district for which the attorney commissioner was elected.

(d) Except when a term of office has less than ninety (90) days remaining, vacancies in the office of an attorney commissioner to the judicial nominating commission shall be filled for the unexpired term of the member creating the vacancy by a special election **conducted in accordance with section 3 of this chapter in the district from which the attorney commissioner was elected.** An attorney commissioner who is elected to fill an unexpired term shall commence the attorney

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commissioner's duties immediately upon the certification of the new attorney commissioner's election to the secretary of state.

SECTION 4. IC 33-27-2-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 3. The attorney commissioners of the judicial nominating commission shall be elected by the following process:

(1) The clerk of the supreme court shall, at least ninety (90) days before the date of an election, send a notice by mail to the ~~address for each qualified elector shown on the records of the clerk~~ **speaker of the house of representatives and the president pro tempore of the senate** informing the ~~electors~~ **speaker of the house of representatives and the president pro tempore of the senate** that nominations for the election must be made to the clerk of the supreme court at least sixty (60) days before the election.

(2) ~~A nomination in writing accompanied by a signed petition of thirty (30) electors from the nominee's district; and the written consent of the nominee shall be filed; by mail or otherwise; by any electors or group of electors admitted to the practice of law in Indiana who reside in the same district as the nominee; in the office of the clerk of the supreme court~~ At least sixty (60) days before the election, **the speaker of the house of representatives shall nominate one (1) person admitted to practice law in Indiana from each court of appeals district to stand for election to the judicial nominating commission. Not more than two (2) persons nominated by the speaker of the house of representatives may be members of the same political party.**

(3) At least sixty (60) days before the election, the president pro tempore of the senate shall nominate one (1) person admitted to practice law in Indiana from each court of appeals district to stand for election to the judicial nominating commission. Not more than two (2) persons nominated by the president pro tempore of the senate may be members of the same political party.

~~(3)~~ (4) The clerk of the supreme court shall prepare and print separate ballots for each court of appeals district. These ballots must contain the names and residence addresses of ~~all the~~ **the** nominees residing within the district for which the ballots are prepared ~~and whose written nominations, petitions, and written statements of consent have been received sixty (60) days before the election; who have been nominated by the speaker of the house of representatives or the president pro tempore of the senate.~~

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~~(4)~~ (5) The ballot must read as follows:

Indiana Judicial Nominating Commission

BALLOT FOR DISTRICT ()

To be cast by individuals residing in District () and registered with the Clerk of the Supreme Court as an attorney in good standing under the requirements of the Supreme Court. Vote for one (1) member listed below for Indiana Judicial Nominating Commissioner for the term commencing _____.

District ()

(Name) (Address)

(Name) (Address)

~~(Name)~~ ~~(Address)~~

To be counted, this ballot must be completed, the accompanying certificate completed and signed, and both together mailed or delivered to the Clerk of the Supreme Court of Indiana, Indianapolis, Indiana, not later than _____.

DESTROY BALLOT IF NOT USED

~~(5)~~ (6) In each district, the nominee receiving the most votes from the district shall be elected.

~~(6)~~ (7) The clerk shall also supply with each ballot distributed a certificate, to be completed and signed and returned by the elector voting the ballot, certifying that the voter is registered with the clerk of the supreme court as an attorney in good standing under the requirements of the supreme court, and that the voter voted the ballot returned. A ballot not accompanied by the signed certificate of the voter shall not be counted.

~~(7)~~ (8) To maintain the secrecy of each vote, a separate envelope shall be provided by the clerk for the ballot, in which only the voted ballot may be placed. This envelope shall not be opened until the counting of the ballots.

~~(8)~~ (9) The clerk of the supreme court shall mail a ballot and the accompanying material to all electors at least two (2) weeks before the date of the election.

~~(9)~~ (10) The ballot and the accompanying certificate must be received by the clerk of the supreme court by 4 p.m. on the last day of the election period.

~~(10)~~ (11) Upon receiving the completed ballots and the accompanying certificate, the clerk of the supreme court shall insure that the certificates have been completed in compliance with this article. All ballots that are accompanied by a valid certificate shall be placed in a package designated to contain ballots. All accompanying certificates shall be placed in a

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separate package.

~~(11)~~ **(12)** The clerk of the supreme court, with the assistance of the secretary of state and the attorney general, shall open and canvass all ballots after 4 p.m. on the last day of the election period in the office of the clerk of the supreme court. A ballot received after 4 p.m. may not be counted unless the chief justice orders an extension of time because of unusual circumstances. Upon canvassing the ballots, the clerk of the supreme court shall place all ballots back in their packages. These, along with the certificates, shall be retained in the clerk's office for six (6) months, and the clerk may not permit anyone to inspect them except upon an order of the supreme court.

~~(12)~~ **(13)** Not later than ten (10) days after the election, the clerk shall certify the results to the secretary of state.

~~(13)~~ **(14)** In an election held for selection of attorney commissioners of the judicial nominating commission, if **the two** (2) ~~or more~~ nominees are tied, the canvassers shall resolve the tie by lot in a manner that they shall determine, and the winner of the lot is considered elected.

SECTION 5. IC 33-27-2-9 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 9. The commissioners, employees, and staff of the judicial nominating commission are immune from civil liability for any act or proceeding taken, or communication or statement made, relevant to:

- (1) the evaluation of a candidate under IC 33-27-3-2; **or**
- (2) a recommendation concerning the approval or rejection of a justice or judge under IC 33-27-3-7.**

SECTION 6. IC 33-27-3-7 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 7. **(a) If a justice or judge has filed a statement with the secretary of state under IC 33-24-2-2 or IC 33-25-2-2 that the justice or judge wishes to be retained in office, the judicial nominating commission may recommend that the justice or judge be:**

- (1) approved; or**
- (2) rejected.**

(b) A recommendation under this section must be filed with the secretary of state not later than noon on August 1. The affirmative votes of at least four (4) members of the judicial nominating commission are required to make a recommendation under this section. The judicial nominating commission is not required to make a recommendation.

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(c) If the judicial nominating commission makes a recommendation under this section, the recommendation shall be placed on the ballot in accordance with IC 33-24-2-5 or IC 33-25-2-5.

SECTION 7. [EFFECTIVE UPON PASSAGE] (a) Notwithstanding IC 33-27-2-1 and IC 33-27-2-2, as amended by this act, the term of office of each:

(1) appointed nonattorney member; and

(2) elected attorney member;

of the judicial nominating commission expires on September 1, 2007.

(b) Not later than June 1, 2007, the clerk of the supreme court shall begin proceedings to conduct a special election under IC 33-27-2-3, as amended by this act, to replace the elected attorney members of the judicial nominating commission whose terms of office expire in accordance with subsection (a).

(c) Not later than August 1, 2007, the governor shall appoint three (3) new nonattorney members of the judicial nominating commission in accordance with IC 33-27-2-1 to replace the appointed nonattorney members of the judicial nominating commission whose terms of office expire in accordance with subsection (a).

SECTION 8. An emergency is declared for this act.

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